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OCT 14 1929
CHARLES ELMORE CROPLEY
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In the Supreme Court of the United States.

No. 20 Original—October Term, 1929.

Ex Parte: In the matter of the Petition of CHARLES F. HOBBS, Commissioner of Insurance of the State of Kansas, and WILLIAM A. SMITH, Attorney-general of the State of Kansas, for a Writ of Mandamus to the HONORABLE JOHN C. POLLOCK, District Judge of the District Court of the United States for the District of Kansas.

REPLY BRIEF OF PETITIONERS

ON THEIR—

(a) Application for Leave to File a Reply to the Return;
(b) Application for Appointment of a Commissioner to Take Evidence.

WILLIAM A. SMITH,
Attorney-general of the State of Kansas,
JOHN G. EGAN,
Asst. Attorney-general of the State of Kansas,
JOHN F. RHODES,
Attorneys for Petitioners.

13-1462

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STATEMENT.

At page 36 of the brief of respondent in support of the return, the attorneys on which brief are also attorneys for the insurance companies in the one hundred fifty cases referred to in the petition, it is charged that the petitioners were careless in not calling to the attention of the court, in their motion for leave to file a reply, to the fact that the motion for an interlocutory injunction, upon which the interlocutory injunction was granted, was not the motion of the insurance companies filed April 11, 1928, or that the petitioners were willing that the court should fall into error in the matter. In the brief of respondent in opposition to the application of petitioners for leave to file a reply to the return and to the application for

petitioners for the appointment of a commissioner to take evidence (pp. 13, 17, 20, 21), it is charged, in substance, that the petitioners attempted to mislead the court by not showing to it upon their petition that the first motion of the insurance companies for an interlocutory injunction, which was filed April 3, 1928, had been withdrawn.

These charges are an attempt to create a diversion from the issues in the case.

They are without foundation in fact.

The petition shows plainly that the motion of the insurance companies for an interlocutory injunction upon which the interlocutory injunction was granted by the respondent May 18, 1929, the day that motion was presented to the respondent as district judge, is a different motion from that of the insurance companies for three judges and an interlocutory injunction which was filed April 11, 1928. The body of the motion of April 11, 1928, is set out as Appendix C, p. 95 of the petition. It covers about six and one-half lines, and the greater part of it consists of a request that the district court constitute and assemble a court of three judges to consider the application of the plaintiff for an interlocutory injunction, and it closes with the brief request that the court (meaning a court of three judges) should grant the plaintiff an interlocutory injunction as prayed for in the bill of complaint.

As the greater part of this motion was upon the matter of a court of three judges being constituted and hearing the application for an interlocutory injunction, it was properly referred to at page 22 of the petition as a "motion for the assembling of a court of three judges to hear its application for an interlocutory injunction." The context in paragraph XIV, pages 22 and 23, shows that the meaning of that reference was to the entire motion.

In paragraph XV, pages 23 and 24, a portion of the second motion

for an interlocutory injunction, and upon which the interlocutory injunction was granted May 18, 1929, is set out expressly as a portion, and contains seventeen full lines and two lines of about three-quarters length each. This motion refers to the written notice served by the defendants upon the plaintiff that they would proceed to enforce the rate order, and it contains statements which do not appear in the first motion.

In paragraph XII, page 21 of the petition, it is stated that on May 6, 1929, the defendant served upon the plaintiff that notice. It is obvious from the face of the petition, therefore, that the motion presented to the court on May 18, 1929, by the insurance companies was not the motion filed by them April 11, 1928, and it is also obvious on the face of the petition that it was this second motion that was presented to the district judge upon May 18, 1929, and upon which he granted the interlocutory injunction.

On the objection made by respondent to the conclusions of law contained in the reply, we think it is sufficient to say that the return contains a number of conclusions of law, and as respondent saw fit to use them in his return, the petitioners controverting them have a right in the form of reply submitted to deny such conclusions of law contained in the return and to make statements of conclusions of law to counter those contained in the return.

Respectfully submitted,

WILLIAM A. SMITH,
Attorney-general of the State of Kansas,

JOHN G. EGAN,
Asst. Attorney-general of the State of Kansas,

JOHN F. RHODES,
Attorneys for Petitioners.

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